

James S. Davis CALBAR NO.207963
Email: Jamesdee3080@msn.com
James S. Davis Attorney at Law
730 Broadway, Suite 102
Chula Vista CA 91910
(619) 934-4600
Of Counsel for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DALLAS BUYERS CLUB, LLC, a
Texas Limited Liability Company,

Plaintiffs,

v.

MARIO GERENA,
Defendant.

Case No.: 3:15-CV-02063-BAS-DHB

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO STAY
PERSUANT TO
SERVICEMEMBERS CIVIL RELIEF
ACT(SCRA)

BACKGROUND

Plaintiff filed its complaint on September 16, 2015 and requested expedited discovery for the identity of the subscriber associated with IP address 68.8.32.194. On October 14, 2015, the Court granted plaintiff leave to subpoena the records of Internet Service Provider (ISP) Cox Communications for information identifying parties affiliated with and responsible for the activity associated with IP address 68.8.32.194. On November 30, 2015, Cox Communication provided the information which identified Mario Gerena as the subscriber. Prior to Cox

Communication providing the subscriber information, Plaintiff's counsel was contacted by Defendant and his wife.

On November 19, 2015, Plaintiff received a call from an individual who identified herself as the wife of the Defendant with questions regarding the notice of the subpoena and lawsuit the Defendant had received from Cox Communication. At that time, we had not received the subpoena response from Cox Communication and requested them to provide contact information and informed them that we would contact them when we received the subscriber information from Cox Communication. The individual provided an address and phone number. The address provided pertained to a residence outside of the area of San Diego, California: 1331 Laveta Ter, Los Angeles, CA.

On November 24, 2015, Defendant himself contacted Plaintiff regarding the notice of subpoena and lawsuit provided to Defendant by Cox Communication. Defendant was able to provide the IP address and additional information which allowed counsel for Plaintiff to discuss the matter. In discussing the infringement with the Defendant, he indicated that he had used the BitTorrent software to download movies and that he did watch Dallas Buyers Club. Defendant also indicated that he felt that he had done nothing wrong and that it was not his problem that Plaintiff's movie was being provided for people to watch for free. At this time, Defendant claimed that he was currently on active duty in the Marines.

When Plaintiff was told that the Defendant was on active duty in the Marines, Plaintiff requested that Defendant provide documents showing he was currently on active duty. Defendant stated he would provide documentation showing he was on active duty. The November 24, 2015, call was from the Defendant on what appeared to be a local number.

On November 30, 2015, Plaintiff received the subpoena response from Cox Communication and on December 1, 2015, called the telephone number provided in the prior call to discuss this matter. Plaintiff's counsel was again told Defendant was deployed and requested documentation showing his deployment. On December 8, 2015, Plaintiff sent a letter to Defendant's address requesting assistance in resolving this matter and received no response. On December 18, 2015, Plaintiff checked the Department of Defense Manpower Data Center for a Status Report on Defendant pursuant to the Servicemembers Civil Relief Act and there was no indication of Defendant being on active duty. (Exhibit 1, Manpower Data Center results) On December 21, 2015, Plaintiff sent a letter requesting Defendant provide Plaintiff with verification of his active duty status and received no response. (Exhibit 2, letter requesting verification of status) On January 6, 2016, Plaintiff's counsel again called the provided phone number and was told this was a wrong number.

On January 13, 2016, after no response and being told the number provided was a wrong number, Plaintiff filed an Amended Complaint naming the Defendant.

On January 13, 2016, Plaintiff contacted *Hide and Go Seek Process Servers* to complete service. On January 18, 2016, Rachel Debolt of *Hide and Go Seek Process Servers* attempted to make service at Defendant's last known address, 419 Vandegrift Blvd, Apt 36, Oceanside, CA, and was told by a woman, no one by that name lived at the address. The Vandegrift address was the address provided by Cox Communication and where Defendant received the subpoena information from Cox Communication in which he responded. Plaintiff attempted to have service made at, 1331 Laveta Ter, Los Angeles, CA the address provided when Plaintiff was contacted on November 19, 2015. This address had been provided by Defendant in a prior call and information in Plaintiff investigation linked the Defendant to this address. (Exhibit 3, search of people Defendant may know) On January 27, 2016, Rachel Debolt of *Hide and Go Seek Process Servers* attempted to make service at the Los Angeles address and was told the Defendant no longer lived at the address. (Affidavit attached of Rachael Debolt)

On January 28, 2016, Plaintiff rechecked Defendant's status with Department of Defense Manpower Data Center and determined Defendant status had not changed. (Exhibit 4, 01/28/2016 Manpower Data Center results) On January 28, 2016, Plaintiff, also sent a copy of the Summons and Complaint to

Defendant's at his last known address. Searches were performed via search engines such as Google, Social Media sites, and commercial paid research services and Plaintiff was unable to locate any additional address for Defendant. Plaintiff had prepared a motion for substitute service and performed a final search for information on locating the Defendant. In the final search, Plaintiff's investigators located new pictures of the Defendant deployed and from the pictures determined he used a different name. Plaintiff was able to confirm Defendant was active duty through the Department of Defense Manpower Data Center with the new information. (Exhibit 5, Confirmation of active duty)

Based on Defendant current active duty status, Plaintiff requests this matter be stayed 9 months.

DATED: February 15, 2016

Respectfully submitted,
JAMES S. DAVIS ATTORNEY AT LAW
/s/James S. Davis
James S. Davis CALBAR NO.207963
Jamesdee3080@msn.com
Of attorneys for the plaintiff